HONOURABLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HONOURABLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.17248 OF 2006

Between:

M/s. New Vidyanagar Colony Welfare
Association, represented by its Secretary,
P.C.Pillai, Neredmet, Hyderabad. …Petitioner

And

Government of Andhra Pradesh,
represented by its Secretary,
Department of Municipal Administration,
Secretariat, Hyderabad and others. …
Respondents

:: O R D E R ::

Counsel for the petitioners : Sri Bethi Venkateswarlu

Counsel for respondent No.1 : Government Pleader for Municipal Administration.

Counsel for respondent No.2 : Sri P.Radhakrishna

Counsel for respondent No.3 : None.

27th November 2006

Per G.S.SINGHVI, C.J.

For many centuries, the Indian society had cherished two basic values of life, namely, 'Satya' and 'Ahimsa'. One of these values i.e., 'Satya' constituted an integral part of the judicial system at various levels in our country. In pre-independence era, the people used to feel proud to tell truth in the Court proceedings irrespective of the consequences. However, post-independence period has seen a dramatic devaluation of the ethics. The materialism has over-shadowed the old ethos and quest for personal gain is so immense that the people do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in court proceedings. In a substantial number of cases, the litigants resort to falsehood. A new creed of litigants has developed in the last 40 years, who do not have any respect for truth. They can go to any length to make false statements, misleading statements and suppress facts and documents with a view to persuade the Court to pass favourable orders. In order to meet this challenge, the Courts have evolved and will continue to evolve new mechanism to show doors to the litigants who do not come with clean hands. One of the rules laid down by the courts is that a litigant who touches the pure fountain of justice with tainted hands is not entitled to hearing on the merits of the case.

In **Hari Narain v. Badri Das**[1], the Supreme Court upheld the objection raised on behalf of the respondents that the appellant was guilty of misstating the facts and revoked the leave by making the following observations:

> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Art.136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

In **Welcome Hotel and others v. State of Andhra Pradesh and others etc.**[2], the Supreme Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

In **G. Narayanaswamy Reddy and others v. Governor of Karnataka and another**[3], the Supreme Court declined relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act on account of interim stay order passed in a writ petition. While dismissing the special leave petition, the Court observed:

> "Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we

> came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Art.136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

In **S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**[4], the Supreme Court held that where a preliminary decree was obtained by playing fraud on the Court in-as-much as a vital document was withheld in order to gain advantage on the other side, such party deserves to be thrown out at any stage of the litigation.

In **Nand Lal and others v. State of Jammu and Kashmir and another**[5], a learned Judge of Jammu and Kashmir High Court held that if a party does not disclose all the facts correctly and candidly, it is not entitled to be heard on the merits of the case. Some of the observations made by the learned Single Judge are reproduced below:

> "Where the petitioners under Art. 226 have not stated the relevant facts in the petition or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. And even if the petitioners have a good case on merits, the Court will be entitled to decline to go into the merits and dismiss their petition, because the conduct of the petitioners has been such as to mislead the Court."

We have made a mention of the above noted settled principle and judgments because, after perusing the record of the case and hearing learned counsel for the parties, we are convinced that the petitioner is guilty of highly contumacious conduct and is, therefore, not entitled to any relief under Article 226 of the Constitution of India.

A perusal of the record shows that while projecting its case for issue of a writ of prohibition against respondents by alleging that they have encroached the land earmarked in the layout of the colony for park, the petitioner has deliberately suppressed the fact that two government school buildings had been constructed on a portion of the land earmarked as open space way back in 2003 and the petitioner itself, without obtaining sanction from the competent authority, constructed community hall measuring 350 square feet on the same piece of land. In paragraph 4 of the counter affidavit filed by him on 26-9-2006, Sri D.John Samson, Commissioner, Malkajgiri Municipality has averred as under:

> "It is respectfully submitted that in reply to para 3 of the affidavit, I submit that the suit schedule land was shown as Government land in Sy.No.275 of Malkajgiri by Mandal Revenue Officer, Malkajgiri, and informed to the Collector, R.R. District, along with sketch map showing as proposed for school building vide his Lr.No.A/1819/2003, dt.18.12.2003, under intimation to Revenue Divisional Officer, Chevella Division, R.R. District, District Educational Officer, R.R. District and the respondent Municipality. As of now, there are two Government School buildings existing in the suit schedule land apart from petitioner's Welfare Association Building. These school buildings were inaugurated on 12-2-2004. At present, primary school is running. Now the two additional class rooms are being constructed by the 3rd respondent at the instance of the Government."

Since no rejoinder affidavit has been filed on behalf of the petitioner despite the fact that copy of the counter-affidavit was supplied to the learned counsel two months ago, it is reasonable to presume that the person filing affidavit on behalf of the petitioner was aware of the fact that two government school buildings are existing at the suit site and yet he deliberately refrained from disclosing the correct facts and real status of the site. To put it differently, it must be held that the petitioner has not approached the Court with clean hands and succeeded in misleading the Court in passing ad interim order dated 23-8-2006. We do not have the slightest hesitation to observe that if the Court had been apprised of the fact that two school buildings had already been constructed on the site in question, the Court would not have passed an ex parte interim order restraining the respondents from continuing with the construction activity.

For the reasons stated above, we hold that the petitioner is not entitled to the relief under Article 226 of the Constitution of India, which empowers the Court to exercise an essentially equitable jurisdiction meant for doing justice to those who approached it with clean hands.

With the above observations, the writ petition is dismissed. The petitioner shall pay costs of Rs.10,000/-, which shall be deposited with Andhra Pradesh State Legal Services Authority within a period of one month. The Member Secretary of the State Legal Services Authority should inform the Court whether or not the petitioner has deposited the amount of cost.

While disposing of the writ petition in the manner indicated above, we deem it proper to record the undertaking of Commissioner, Malkajgiri Municipality that in future no construction would be raised or allowed to be raised in the left over area of the place marked as ‘open

space' in the layout of the colony.

As a sequel to dismissal of the writ petition, WPMP.No.21607 of 2006 filed by the petitioner for interim relief is also dismissed. Interim order dated 23-8-2006 shall stand automatically vacated.

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G.S.SINGHVI, C.J.

27th November, 2006.

C.V.NAGARJUNA REDDY, J.

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[1] AIR 1963 SC 1558
[2] AIR 1983 SC 1015
[3] AIR 1991 SC 1726
[4] JT 1993 (6) SC 331
[5] AIR 1960 J & K 19